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Filing date: **04/09/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048118
Party	Defendant Select Export Corp. dba Trident
Correspondence Address	Cheryl Meide Meide Law Firm, P.A. Corners at Deerwood, 7545 Centurion Parkway, Suite 201 Jacksonville, FL 32256 UNITED STATES cmeide@meidelaw.com
Submission	Opposition/Response to Motion
Filer's Name	Cheryl Meide, Esquire
Filer's e-mail	cmeide@meidelaw.com
Signature	/Cheryl Meide/
Date	04/09/2008
Attachments	SEC.019 Opposition to Motion to Extend Discovery Period.pdf ( 7 pages )(36562 bytes ) Exhibit A.pdf ( 2 pages )(12299 bytes ) Exhibit B1.pdf ( 1 page )(179681 bytes ) Exhibit B2.pdf ( 1 page )(17546 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Jack Richeson & Co., Inc.,  
Petitioner

v.

Select Export Corp. D/B/A Trident  
Respondent

In the matter of  
Trademark Registration No. 2,619,642  
For the mark: TRIDENT (and design)  
International Classes 9, 16, and 20

Cancellation No.: 92,048,118

RESPONDENT'S MEMORANDUM IN  
OPPOSITION TO PETITIONER'S  
MOTION TO EXTEND DISCOVERY  
PERIOD FORTY-FIVE DAYS

SEC.0401

REGISTRANT'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION  
TO EXTEND DISCOVERY PERIOD FORTY-FIVE DAYS

This memorandum is submitted in opposition to Petitioners' Motion to Extend Discovery Period Forty-Five Days ("Petitioners' Motion"). Petitioners' Motion should be denied as Petitioner fails to show good cause for the requested extension. Further, Petitioner's Motion should be denied as no settlement negotiations have taken place between the parties at any time during the present Cancellation Proceeding, Respondent has responded timely to all of Petitioner's discovery requests, Respondent has timely submitted Respondent's discovery requests, and Petitioner has substantially delayed in initiating its desired discovery.

FACTS

Petitioner's counsel, Paul Kruse, Esquire is extremely well versed with the rules of the USPTO. Mr. Kruse worked several years as an employee at the USPTO as a Trademark Attorney - Advisor. Mr. Kruse has seriously misstated the facts in this matter.

The parties have not engaged in any settlement negotiations at any time during the present Cancellation Proceeding instituted by Petitioner on September 17, 2008.<sup>1</sup> Petitioner has brought up only the general thought of settlement to Respondent on the day the Petition to

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<sup>1</sup> Only one settlement proposal was provided by Petitioner. Such proposal was prior to Petitioner's initiation of this Cancellation Proceeding on September 12, 2007. Petitioner's settlement proposal was so offensive to Respondent it did not merit a response.

Cancel was filed (September 17, 2008), five months later on February 26, 2008, and then less than one day prior to the close of the discovery (April 3, 2008) and on the close of discovery (April 4, 2008) in an attempt to get an extension of the discovery period. [See Exhibit A] At no time during the present Cancellation Proceeding has Petitioner or Respondent's counsel for this cancellation proceeding offered an actual settlement proposal. [See Exhibit A] At no time did the parties mention delaying the proceedings for settlement or any other reason. Respondent has been very consistent and very clear with Petitioner that Respondent will not engage in settlement discussions with Petitioner unless Petitioner will offer a serious settlement proposal. Petitioner has failed to do so. [See Exhibit A]<sup>2</sup>

Respondent received Petitioner's discovery requests and timely responded to such requests without any delay on March 14, 2008. Petitioner did not attempt to engage in any further discovery devices until the very day discovery closed when Petitioner filed its Motion to Extend. Respondent timely submitted its discovery requests via Certified Mail on April 1, 2008. [See Exhibit B] On the day before the close of discovery Petitioner mentioned that Petitioner might have questions regarding Respondent's discovery responses. Respondent immediately responded by encouraging the parties to set up a call to discuss any questions while noting that such questions are not hindered by the close of discovery. [See Exhibit A] Petitioner failed to respond to Respondent to set up a call to discuss any such questions.

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<sup>2</sup> Petitioner has received a Settlement Demand Letter from Respondent's litigation counsel separate from this case in an attempt to allow Petitioner to avert impending civil court litigation. However such settlement offer is separate from this case and is submitted with the understanding that such communications will not hinder this Cancellation Proceeding from moving forward. [See Exhibit A]

ARGUMENT

Petitioners' Motion Is Not Based On Good Cause; Petitioner's Motion is Necessitated By  
Petitioner's Own Lack of Due Diligence and Unreasonable Delay

Pursuant to Fed. R. Civ. P. 6(b) and 37 CFR §2.116(a), the Board may grant a motion for extension based on good cause. Petitioners' Motion fails to show any good cause as to why Petitioners should receive an extension of the discovery period. Petitioner has had sufficient time to engage in discovery for six months with no delays by Respondent or the presence of any settlement negotiations. Petitioner's delay in these proceedings should not be rewarded with an extension of the discovery period to the detriment of Respondent.

A delay in these proceedings will substantially prejudice Respondent as such proceedings were originally initiated by Petitioner for purposes of harassing Respondent to prevent Respondent's impending civil law suit against Petitioner. Such delay will require Respondent to engage in unmerited depositions and other potential discovery causing further expense and legal fees for Respondent to pressure Respondent to succumb to a less favorable settlement arrangement in Respondent's impending civil litigation against Petitioner. Such delay will also negatively affect Respondent as each day this case is delayed is another day that negatively affects business opportunities for Respondent. Petitioner should not be rewarded with such detrimental effects against Respondent because Petitioner simply choose not to engage in discovery.

Any questions that Petitioner may have regarding Respondent's discovery responses do not affect the close of discovery. Responses to discovery requests can be dealt with and may not even be due until after the period for discovery has closed. Rhone-Poulenc Industries v. Gulf Oil Corporation, 198 U.S.P.Q. 372 (T.T.A.B. 1978).

By contrast, discovery depositions must be noticed and taken prior to the close of discovery. Trademark Rule §2.120(a). Petitioner's failure to mention, to notice, or complete any discovery deposition of Respondent was caused by nothing more than delay by Petitioner. Petitioner had every opportunity to engage in discovery and Petitioner simply failed to do so to

the extent desired. Petitioner's counsel is a seasoned former USPTO Trademark Attorney - Advisor that fully understands the consequences of failing to timely utilize discovery devices.

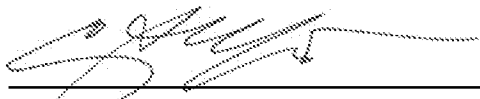
A party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of due diligence or unreasonable delay in taking the required action during the time previously allotted therefore. TMBP § 509.01(a). *See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000). Petitioner has failed to show that the extension request at hand is not necessitated by Petitioner's own lack of due diligence or unreasonable delay. Petitioner affirmatively exhibited a lack of due diligence and unreasonable delay as Petitioner had Respondent's full cooperation yet Petitioner failed to initiate its desired discovery for six months.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C §1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that she is properly authorized to execute this document on behalf of Respondent; and all statements made of her knowledge are true and that all statements made on information and belief are believed to be true.

#### CONCLUSION

Petitioners' Motion should be denied as Petitioner has failed to show any facts said to constitute good cause for the requested extension. Accordingly, Respondent respectfully requests that the Board deny Petitioner's motion in its entirety and allow the proceedings to resume as originally set.

Respectfully submitted,



Cheryl Meide  
Attorney for Respondent  
Florida Bar No. 0064173  
Meide Law Firm, P.A.  
Corners at Deerwood  
7545 Centurion Parkway, Suite 201  
Jacksonville, Florida 32256

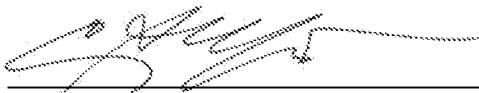
April 9, 2008

Date

cmeide@meidelaw.com  
Phone: (904) 564-1818  
Fax: (904) 564-1848

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent's Memorandum In Opposition To Motion to Extend Discovery Period Forty-Five Days was provided via email to pkruse@bonelaw.com, via facsimile at 1-615-687-6993, and provided via overnight delivery service, postage prepaid, in an envelope addressed to Paul W. Kruse, Esq., Bone McAllester Norton PLLC, 511 Union Street, Suite 1600, Nashville, Tennessee, 37219 on the date set forth below.



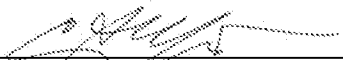
April 9, 2008

Cheryl Meide  
Attorney for Respondent  
Florida Bar No. 0064173  
Meide Law Firm, P.A.  
Corners at Deerwood  
7545 Centurion Parkway, Suite 201  
Jacksonville, Florida 32256  
cmeide@meidelaw.com  
Phone: (904) 564-1818  
Fax: (904) 564-1848

Date

CERTIFICATE OF ESTTA SUBMISSION

Date of Deposit April 9, 2008

Signature 

Name: Cheryl Meide, Esquire

I hereby certify that this correspondence to the Trademark Trial and Appeal board is being submitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") on the dated noted above.

EXHIBIT A

EXHIBIT B (B1 and B2)



From: Cheryl Meide [cmeide@meidelaw.com]  
Sent: Friday, April 04, 2008 6:36 PM  
To: 'Paul W. Kruse'  
Subject: RE: Jack Richeson & Co., Inc. v. Select Export Corp.

Dear Paul:

Thank you for your after hours voice message regarding your desire to extend the discovery period. As you have provided no reason for extending the discovery period and you have waited until the last minute to do so, again we see no good cause for such an extension. Indeed we are a bit baffled with your request as we provided you with timely and appropriate discovery responses with no follow up from you until now for purposes of extending the discovery period.

The last communication I had from you was on February 26, 2008 when I contacted you regarding our discovery responses. To the extent there is any need or cause for extending the discovery period, you have yet to express any need, cause, or concern.

You keep stating that your client is interested in settlement discussions and we are open to having such discussions. Yet we have not received any settlement offer from your client since September 12, 2007 and we have yet to receive any serious settlement offer at all. If your client is interested in settlement please feel free to propose a serious settlement offer. You should also receive communications from litigation counsel regarding settlement/litigation; however such communications will not impede this case from going forward.

Please let me know if you have any questions.

Kind Regards,

Cheryl

-----Original Message-----

From: Cheryl Meide [mailto:cmeide@meidelaw.com]  
Sent: Thursday, April 03, 2008 6:57 PM  
To: 'Paul W. Kruse'  
Subject: RE: Jack Richeson & Co., Inc. v. Select Export Corp.  
Importance: High

Hi Paul:

Thank you for your voice message and email. We sent our discovery requests to you on April 1, 2008. I would think you should receive them in the next day or two.

You do not state your reason and I am unaware why you would want to extend the discovery period. We do not see why any extension would be necessary. To the extent there is good reason to extend the discovery period, we would have expected to hear from you much sooner than 3:00pm the day prior to the close of discovery. In general we would also have a hard time consenting to an extension of the discovery period since this case has already been tried in large part and lost by Trident S/A and we are well aware that your client brought this case simply to further harass my client.

As noted in our last response to your request for settlement talks, we are always open to serious settlement talks. However our previous settlement talks were nowhere within the realm of reason regarding XXXXXXXXXXXXXXXXXXXX. We are open to receiving your client's serious proposal on settlement.

Because both parties are represented by counsel, this case has been brought for harassment purposes, and your client has been underhanded in his direct and indirect dealings with my client, we do not believe a direct communication between Jack Richeson and Select Export Corp. would be wise or fruitful. It is my understanding that you should hear from Select Export Corp's litigation counsel shortly regarding settlement/litigation for Jack Richeson and Utrecht.

To the extent you have any questions regarding our discovery responses, please let me know when you would like to have a call to discuss your questions. As you know, dealing with discovery responses is not hindered by the close of discovery.

Should you have any questions, please do not hesitate to contact me.

Kind Regards,

Cheryl Meide  
Meide Law Firm, P.A.  
Trademark and Technology Law  
7545 Centurion Parkway, Suite 201  
Jacksonville, FL 32256  
Phone: 904-564-1818  
Fax: 904-564-1848  
cmeide@meidelaw.com  
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-----Original Message-----

From: Paul W. Kruse [mailto:pkruise@bonelaw.com]  
Sent: Thursday, April 03, 2008 2:18 PM  
To: cmeide@meidelaw.com  
Subject: Jack Richeson & Co., Inc. v. Select Export Corp.  
Importance: High

Cheryl:

I just left you a voice mail. I think we should extend the discovery period 45 days. What do you say?

Also, what do you think about having the parties talk directly to see what they can work out?

Paul

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04/01/2008

Sent To: Paula B. Bone McAllister Natchez  
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 or PO Box No. 511 Union Street, Suite 1600 1  
 City, State, ZIP+4 Nashville Tennessee 37219

PS Form 3800, June 2005

See Reverse for Instructions

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# *Meide Law Firm, P.A.*

*Technology Law and Trademark Law*

*Corners At Deerwood  
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Suite 201  
Jacksonville, Florida 32256*

*Telephone: 904.564.1818  
Facsimile: 904.564.1848  
[cmeide@meidelaw.com](mailto:cmeide@meidelaw.com)  
[www.Meidelaw.com](http://www.Meidelaw.com)*

CDM08-024  
April 1, 2008  
Via Certified Mail  
7005 1160 0003 9114 5641

Bone McAllester Norton PLLC  
511 Union Street  
Suite 1600  
Nashville City Center  
Nashville, Tennessee 37219

Attention: Paul W. Kruse, Esquire

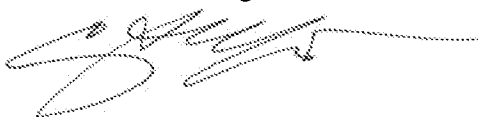
Re: Jack Richeson & Co., Inc. v. Select Export Corp.  
Petition to Cancel No. 92,048,118  
Respondent's Discovery Requests

Dear Paul:

Enclosed are Respondent's First Set of Requests for Production of Documents and Things, Respondent's First Set of Interrogatories to Petitioner, and Respondent's First Set of Requests for Admissions.

Please let me know if you have any questions. Thank you.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Cheryl Meide', with a long horizontal flourish extending to the right.

Cheryl Meide

C: Herbert Moebius, Select Export Corp.  
Enclosures